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IN THE
COURT OF APPEALS OF INDIANA

COURTNEY C. DIXIE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0511-PC-661
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-9804-CF-214

September 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Courtney Dixie appeals the denial of his petition for post-conviction relief (PCR). He argues his trial counsel was ineffective because he agreed a competency hearing was not required in light of written reports from the evaluating professionals. Because defense counsel's performance was not deficient, we affirm.

FACTS AND PROCEDURAL HISTORY

In April 1998, Dixie was charged with murder[1] for stabbing his ex-girlfriend Vickey Gallespie to death in the presence of their infant child. In June 1998, Dixie's appointed counsel, John Bohdan, filed notice of a possible insanity defense under Ind. Code § 35-36-2-1 and stated he believed "there to be a genuine issue as to [Dixie's] competence to stand trial." (R. at 34.)

The trial court appointed Dr. John Rathbun, a psychiatrist, and Dr. Stephen Ross, a psychologist, to determine whether Dixie was sane at the time of the offense and presently competent to stand trial. Both doctors concluded Dixie was sane at the time of the offense. They also agreed Dixie understood the nature of the charges against him and the proceedings. Their opinions diverged, however, with respect to Dixie's ability to assist counsel.

Dr. Rathbun stated: "At the time of the examination, Mr. Dixie appeared impaired in his ability to assist his counsel in the conduct of his defense." (PCR Ex. F at 1.) He also noted:

> Because Mr. Dixie has a manic disorder, his jud[g]ment and ability to control his flow of speech in his own best interest will be impaired. This is

[1] Ind. Code § 35-42-1-1. Dixie was also charged with being an habitual offender under Ind. Code § 35-50-2-8.

> illustrated by the extreme difficulty I experienced in getting him to focus in on the events of April 9. I think the average attorney would experience even more difficulty than I did.
>
> Based on my difficulties interviewing this man, I conclude that his ability to act cooperatively with his attorney is significantly impaired. I also believe that his ability to act in his own interest would be similarly impaired. In particular, he would be likely to impulsively blurt out information without regard to the advice of his attorney, or to his own best interest. He would also be impaired in making considered jud[g]ments about choosing a strategy and following the advice of his attorney.

(*Id.* at 4.)

Dr. Ross examined Dixie two weeks later. In his report, Dr. Ross stated:

> [T]he defendant has a fairly good understanding of the legal system based upon his previous involvement. He seems to understand how he can be defended against the charges lodged against him as "my attorney can give me legal advice and counsel". * * * * * He understands the concept of plea bargaining. He understands the need to respond to the judge in an appropriate manner. When asked if he has confidence in his attorney, he stated "I have confidence in God, he's the one I believe in". He did admit that he has confidence in Mr. Bohdan though he should see me [sic] more often in jail. The defendant felt that he is not able to access his attorney as much as he wanted. The defendant stated that he understood the process of any court hearings that have ensued since his arrest. He understood that the role of his defense counsel was to "make sure none of my rights are violated". He understood his role as a defendant to "help my lawyer as best as I can in proving my innocence, letting him know the facts of the case". * * * * * He appears to have an understanding of the legal issues and procedures in this case as well as the need to maintain a collaborative relationship with his attorney and to help him plan a legal strategy. * * * * * It is this evaluator's opinion of the defendant that he has a fairly good understanding of the legal process and is not experiencing any deficits in his understanding of the judicial system, which would require remediation at this point.

(PCR Ex. G at 6-7.) Dr. Ross also noted: "[Dixie] is a very suspicious individual though it does not appear as though it would interfere with his ability to trust his attorney at this time. The defendant reports that he has the fullest confidence in his legal counsel." (*Id.*

at 10). "He currently understands the charges that are lodged against him, has at least a modicum of trust in his attorney, and has a fairly solid working knowledge of the legal system." (*Id.* at 17.)

Dixie's motion and the doctors' reports were discussed at a status hearing on September 25, 1998.[2] The trial court began by asking: "Based on those reports, do you wish to have a hearing? On competency to stand trial?" (R. at 178.) Attorney Bohdan responded, "[B]oth reports suggest that my client is not incompetent to stand trial. They both believe that insanity is not present." (*Id.*) Attorney Bohdan then explained a third doctor, Dr. Kepes, had diagnosed Dixie as a paranoid schizophrenic a few years before the murder and this had prompted him to file the notice regarding insanity and competency. He confirmed Dr. Ross had been provided with a copy of Dr. Kepes' report and suggested Dr. Kepes be deposed to learn more about his earlier diagnosis. The Court responded: "Okay. Well, is there any need to calendar Mr. Dixie for any other hearings prior to trial?" (*Id.* at 181.) Attorney Bohdan responded:

> Judge, I guess at this point I have to portray a little bit of my inexperience in this regard. For the record, this is the first case where I have filed a notice on an insanity defense or a potential insanity defense. Procedurally, perhaps it would be advisable for me to request a hearing and maybe we can have the three gentlemen come in. I've just never done this before, Judge, quite frankly.

(*Id.* at 181-82.) He further explained he wasn't sure if competency, in a procedural sense, was an issue of fact for trial. The State disagreed with the suggestion Dr. Kepes be part of a competency hearing because his evaluation of Dixie was "well before the alleged

[2] The reports were not admitted into evidence at the status hearing although the court and the parties discussed them.

murder of Ms. Gallespie occurred and certainly well before we stand here in Court today," (*id.* at 182), and Drs. Ross and Rathbun had been appointed to do the present evaluation. The following colloquy then ensued:

> COURT: Well and I guess I'm just not very artfully asking this question, gentlemen. Do we need a full blown competency hearing? Because both of these doctors seem to indicate that Mr. Dixie is competent to stand trial. Now [. . . y]ou've got an issue on insanity, that's your presentation during trial.
>
> [BOHDAN]: Okay. No, I guess in light of a little clarification, Judge, I don't think we need a competency hearing.

(*Id.* at 183) (overlapping interlocution omitted). The trial court stated: "I'm comfortable finding Mr. Dixie competent to stand trial based on the reports. I don't see the need to have doctors come in and tell me what they're going to tell me from the stand, which is what they've told me in rather lengthy and detailed reports." (*Id.* at 184.) No separate competency hearing was held.

Dixie was convicted of all charges in a bench trial and sentenced to an aggregate term of 95 years. His conviction was upheld on direct appeal. *Dixie v. State*, 726 N.E.2d 257 (Ind. 2000). The post-conviction court denied Dixie's petition for relief, finding he had not demonstrated the prejudice necessary to prevail on his claim of ineffective assistance of counsel.

DISCUSSION AND DECISION

Post-conviction proceedings afford petitioners a limited opportunity to raise issues that were unavailable or unknown at trial and on direct appeal. *McCarty v. State*, 802 N.E.2d 959, 962 (Ind. Ct. App. 2004), *trans. denied* 812 N.E.2d 803 (Ind. 2004). When a petitioner appeals the denial of post-conviction relief, he appeals from a negative

judgment; consequently, we may not reverse the post-conviction court's judgment unless the petitioner demonstrates the evidence, as a whole, leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. *Id.* We review the post-conviction court's factual findings for clear error and its conclusions of law *de novo*; we do not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 962-63.

To establish a violation of the Sixth Amendment right to effective assistance of counsel, a defendant must establish the two components set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), *reh'g denied* 467 U.S. 1267 (1984). *Wesley v. State*, 788 N.E.2d 1247, 1252 (Ind. 2003), *reh'g denied*. First, a defendant must show defense counsel's performance was deficient. *Id.* This requires showing counsel's representation fell below an objective standard of reasonableness and counsel made errors so serious that he was not functioning as "counsel" guaranteed to the defendant by the Sixth Amendment. *Id.* The objective standard of reasonableness is based on "prevailing professional norms." *Id.* To succeed on his claim, Dixie must demonstrate "the identified acts of counsel were outside the wide range of professionally competent assistance." *Thacker v. State*, 715 N.E.2d 1281, 1284 (Ind. Ct. App. 1999), *trans. denied* 726 N.E.2d 311 (Ind. 1999). There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Stevens v. State*, 770 N.E.2d 739, 746 (Ind. 2002), *reh'g denied*, *cert. denied* 540 U.S. 830 (2003). Isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Id.* at 747.

Second, a defendant must show the deficient performance prejudiced the defense. *Wesley*, 788 N.E.2d at 1252. This requires showing counsel's errors were so serious as to deprive the defendant of a fair trial, *i.e.*, a trial whose result is reliable. *Id.* To establish prejudice, a defendant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.*

"If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be followed." *Strickland*, 466 U.S. at 697. However, "there are occasions when it is appropriate to resolve a post-conviction case by a straightforward assessment of whether the lawyer performed within the wide range of competent effort that *Strickland* contemplates." *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006).

A defendant is competent to stand trial when he is able to understand the proceedings and assist in the preparation of his defense. *Matheney v. State*, 688 N.E.2d 883, 899 (Ind. 1997), *reh'g denied*, *cert. denied* 525 U.S. 1148 (1999); *see also* Ind. Code § 35-36-3-1. The standard for deciding such competency is whether the defendant can consult rationally with counsel and factually comprehend the proceedings against him. *Culpepper v. State*, 662 N.E.2d 670, 674 (Ind. Ct. App. 1996), *reh'g denied*, *trans. denied* 706 N.E.2d 176 (1998). The defendant must "have sufficient present ability to consult counsel with a reasonable degree of rational understanding and to have a rational as well as factual understanding of the proceedings brought against him." *Id.* A competency hearing is required "only when there is evidence before the trial court that creates a

reasonable or bona fide doubt as to the defendant's competency." *Feggins v. State*, 272 Ind. 585, 586, 400 N.E.2d 164, 166 (1980). The decision whether to hold a competency hearing lies in the province of the trial judge and should be disturbed on review only on a showing of clear error. *Id.* The trial may proceed only if the court finds the defendant is competent. Ind. Code § 35-36-3-1(b).

Dixie states Attorney Bohdan admitted "it was a mistake to stipulate to Dixie's competency." (Br. of Petitioner-Appellant at 12.) He then asserts: "Dr. Rathbun's report would put a reasonable practitioner on notice that there was a question regarding Dixie's competency to stand trial. When Bohdan stipulated to Dixie's competency, his performance fell below prevailing professional norms." (*Id.* at 12-13.) We disagree.[3]

Attorney Bohdan filed the appropriate motion to have Dixie evaluated. The resulting "rather lengthy and detailed reports" (R. at 184) indicated Dixie was "not incompetent." (*Id.* at 178.) The trial court viewed Dr. Rathbun's report as reflecting "extreme difficulty in getting him to focus on the events of April 9th," (*id.*), but concluded both reports "seem to indicate Mr. Dixie is competent to stand trial." (*Id.* at 183.) The trial court stated testimony would not be useful because the reports indicated Dixie was, in fact, competent to stand trial. In light of Dr. Ross's evaluation, which was conducted two weeks after Dr. Rathbun's evaluation, Attorney Bohdan's decision to forgo a full-blown competency hearing was not unreasonable. Dixie has not overcome

[3] We acknowledge Attorney Bohdan admitted his decision was a mistake. Even were we to agree with his characterization, not every "mistake" is an error "so serious that [counsel] was not functioning as the 'counsel' guaranteed to the defendant by the Sixth Amendment." *See Wesley*, 788 N.E.2d 1247, 1252 (Ind. 2003), *reh'g denied*.

the strong presumption Attorney Bohdan's decisions were made in the exercise of reasonable professional judgment. As a result, his claim of ineffective assistance of counsel must fail.

Because Dixie has not demonstrated the evidence, as a whole, leads unerringly and unmistakably to the conclusion he received ineffective assistance of counsel, we affirm.

Affirmed.

BAKER, J., concurs.

SULLIVAN, J., dissents.